

STATE OF MICHIGAN
COURT OF APPEALS

IESHULA R. ISHAKIS, LISA W. SHEPHERD,
GEDALYA ISHAKIS, JOEL SCHECHET,
MARTIN JEROME, ALICE BERLIN, and THE
TAXPAYERS OF THE CITY OF SOUTHFIELD,

UNPUBLISHED
January 11, 2005

Plaintiffs-Appellants,

v

CITY OF SOUTHFIELD BOARD OF REVIEW,
JUNE KOHLER, DAVID KOSKI, CATHLEEN
CROWLEY, BARRY SIMON, and CHERYL
MCCONCHIE,

No. 249434
Oakland Circuit Court
LC No. 2002-046087-CZ

Defendants-Appellees.

Before: Cavanagh, P.J., and Jansen and Fort Hood, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting defendants' motion for summary disposition. Although we reverse the trial court's decision regarding summary disposition based on MCR 2.116(C)(4), we conclude that summary disposition was proper albeit on other grounds. Therefore, we affirm in part and reverse in part.

The individual plaintiffs challenged property tax assessments issued by defendants. The board of review rejected the challenges to the tax assessments. Plaintiffs ultimately filed a claim of appeal of the adverse tax assessment decisions before the Tax Tribunal. However, plaintiffs also filed this litigation, alleging various violations of the Open Meetings Act (OMA), MCL 15.261 *et seq.*, by the board of review. Defendants moved for summary disposition of the litigation, contending that the allegations of the amended complaint raised claims that were pending before and were within the jurisdiction of the Tax Tribunal. The defense also asserted that plaintiffs failed to timely challenge the OMA violations where the decisions were rendered in March 2002, but the complaint was not filed until December 2002. Additionally, defendants asserted that they had complied with the applicable provisions of the OMA, property tax act, and city charter. The defense submitted documentary evidence with their motion for summary disposition and asserted that there was no genuine issue of material fact. Plaintiffs filed a response, contesting the entitlement to summary disposition, but did not file any documentary evidence with the response. In a written order, the trial court granted the defense motion for

summary disposition based on MCR 2.116(C)(4), (5), (7), and (8), but denied the motion based on MCR 2.116(C)(6) and (10).¹

We review summary disposition decisions de novo. *In re Capuzzi Estate*, 470 Mich 399, 402; 684 NW2d 677 (2004). The moving party has the initial burden to support its claim to summary disposition by affidavits, depositions, admissions, or other documentary evidence. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The burden then shifts to the nonmoving party to demonstrate a genuine issue of disputed fact exists for trial. *Id.* To meet this burden, the nonmoving party must present documentary evidence establishing the existence of a material fact, and the motion is properly granted if this burden is not satisfied. *Id.* Affidavits, depositions, and documentary evidence offered in support of and in opposition to a dispositive motion shall be considered only to the extent that the content or substance would be admissible as evidence. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).² Mere conclusory allegations that are devoid of detail are insufficient to demonstrate that there is a genuine issue of material fact for trial. *Quinto, supra* at 371-372. “If summary disposition is granted under one subpart of the court rule when it was actually appropriate under another, the defect is not fatal and does not preclude appellate review as long as the record permits review under the correct subpart.” *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997). Even where discovery is incomplete, summary disposition is appropriate where there is no reasonable chance that further discovery will result in factual support for the nonmoving party. *The Mable Cleary Trust v The Edward-Marlah Muzyl Trust*, 262 Mich App 485, 506-507; 686 NW2d 770 (2004).

The trial court erred in granting the motion for summary disposition based on MCR 2.116(C)(4). The circuit court has jurisdiction over claims made pursuant to the OMA. MCL 15.271. While the defense correctly notes that the amended complaint contains references to the disposition of the tax issue, it is evident from the pleadings that the process underlying the denial of the challenge to the tax assessments and compliance with the OMA is raised in this litigation.

With regard to the challenge of the violations of the OMA by the board, we conclude that summary disposition pursuant to MCR 2.116(C)(10) was proper. Decisions of a public body are presumed to have been adopted in compliance with the OMA. MCL 15.270(1); *Nicholas v Meridian Charter Twp Bd*, 239 Mich App 525, 530; 609 NW2d 574 (2000). The purpose of the OMA is “to promote governmental accountability by facilitating public access to official decision making and to provide a means through which the general public may better understand

¹ The trial court’s written order contradicted the oral ruling. The trial court initially stated that it was granting the motion pursuant to MCR 2.116(C)(4), (5), and (8), but denying the motion pursuant to MCR 2.116(C)(10). The trial court stated that it was also finding in favor of plaintiffs with regard to the statute of limitations problem, which would in effect deny the motion brought pursuant to MCR 2.116(C)(7). However, when asked to reiterate the ruling, the trial court stated that it was granting the motion based on MCR 2.116(C)(4), (5), (7), and (8), but denying the motion as to MCR 2.116(C)(10) because discovery was incomplete. Lastly, the court stated that it could not recall that the motion was based on MCR 2.116(C)(6).

² See also MCR 2.116(G)(4), (5), and (6).

issues and decisions of public concern.” *Herald Co, Inc v Tax Tribunal*, 258 Mich App 78, 83; 669 NW2d 862 (2003). However, mere conclusions that questions of material fact exist regarding violations of the OMA are insufficient to preclude summary disposition. *Willis v Deerfield Twp*, 257 Mich App 541, 550-551; 669 NW2d 279 (2003). In response to the documentation provided by defendants regarding notice and the city provisions, plaintiffs made blanket assertions regarding noncompliance with the OMA. These blanket assertions are insufficient to overcome the presumption of compliance.³ Moreover, plaintiffs failed to identify any factual information that would be revealed prior to the close of discovery that would create a genuine issue of material fact.

Affirmed in part, reversed in part. We do not retain jurisdiction.

/s/ Mark J. Cavanagh

/s/ Kathleen Jansen

/s/ Karen M. Fort Hood

³ As an aside, we note that the purpose of the OMA is to allow the public to receive an understanding of issues of public concern by granting access to official decision making. The OMA applies to decisions rendered during meetings of public bodies. MCL 15.262. Pursuant to the OMA, the term decision is defined as “a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy.” MCL 15.262(d). However, according to the city charter, the confirmation of the assessment roll will occur without formality even if the board of review fails to act during the meeting days. Consequently, it appears that the most appropriate forum to challenge the assessment, regardless of any procedural challenge, is to the Tax Tribunal.